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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

11 Attorneys for Plaintiff
12 United States of America

13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3023-JM
16 Plaintiff,) DATE: January 18, 2008
17 v.) TIME: 11:00 a.m.
18 JESUS JAIME HERNANDEZ-CUEVAS,) GOVERNMENT'S NOTICE OF MOTION AND
19 Defendant.) MOTION FOR:
20) (1) RECIPROCAL DISCOVERY; AND
21) (2) FINGERPRINT EXEMPLARS
22) TOGETHER WITH STATEMENT OF FACTS AND
23) MEMORANDUM OF POINTS AND AUTHORITIES
24)
25)
26)
27)
28)

19 COMES NOW, the plaintiff, the UNITED STATES OF AMERICA, by and through its counsel,
20 Karen P. Hewitt, United States Attorney, and Aaron B. Clark, Assistant United States Attorney, and
21 hereby files its notice of motion and motion for reciprocal discovery, and fingerprint exemplars. These
22 motions are supported by the attached statement of facts and memorandum of points and authorities.

23 DATED: January 7, 2008

24 Respectfully Submitted,

25 KAREN P. HEWITT
26 United States Attorney

27 *Karen P. Hewitt*
28 AARON B. CLARK
Assistant United States Attorney
Attorneys for Plaintiff
United States of America
Email: aaron.clark@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

4 UNITED STATES OF AMERICA,) Criminal Case No. 3:07-CR-3023-JM
5 Plaintiff,)
6 v.) CERTIFICATE OF SERVICE
7 JESUS JAIME HERNANDEZ- CUEVAS,)
8 Defendant.)

11 IT IS HEREBY CERTIFIED THAT:

12 I, Aaron B. Clark, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

13 I am not a party to the above-entitled action. I have caused service of the United States'
14 **Motion for Reciprocal Discovery and Fingerprint Exemplars** on the following parties by US Mail:

15 1. Inge Brauer
2240 F. St.
16 San Diego, CA 92102

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on January 7, 2008

January 7, 2008

Aaron B. Clark

1 KAREN P. HEWITT
2 United States Attorney
3 AARON B. CLARK
4 Assistant U.S. Attorney
5 California State Bar No. 239764
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11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) CRIMINAL CASE NO. 3:07-CR-3203JM
12 Plaintiff,) DATE: January 18, 2008
13) TIME: 11:00 a.m..
14 v.) GOVERNMENT'S STATEMENT OF FACTS AND
15 JESUS JAIME HERNANDEZ-) MEMORANDUM OF POINTS AND AUTHORITIES
16 CUEVAS,) IN SUPPORT OF ITS MOTIONS FOR:
17 Defendant.) (1) RECIPROCAL DISCOVERY; AND
18) (2) FINGERPRINT EXEMPLARS

I

STATEMENT OF THE CASE

20 On November 7, 2007, the Government filed a one-count indictment charging Jesus Jaime
21 Hernandez-Cuevas ("Defendant") with violating 8 U.S.C. § 1326(a) and (b), attempted entry after
22 deportation. On November 13, 2007, Defendant was arraigned on the Indictment and entered a plea of
23 not guilty.

II

STATEMENT OF FACTS

24 On October 5, 2007, at approximately 9:12 p.m., Defendant applied for entry into the United
25 States through the San Ysidro, California Port of Entry as the passenger in a gray 2005 Nissan
26 Pathfinder. The driver was Marisela Hernandez, Defendant's sister. Defendant's mother, Pascuala

1 Cuevas-Hernandez, was also a passenger in the vehicle. During primary inspection, Defendant presented
2 to Customs and Border Protection ("CBP") Officer Romeo Valdez a California Identification Card
3 #A8680357 bearing his name and likeness. Defendant further stated that he was a United States citizen
4 by birth in Los Angeles, CA. Officer Valdez then queried Defendant's name and date of birth in the
5 Treasury Enforcement Communications System (TECS), which indicated Defendant had been previously
6 deported. Officer Valdez thereafter escorted the vehicle and its occupants to secondary inspection.

7 In secondary inspection, officers queried Defendant's fingerprints and photograph through the
8 Integrated Automated Fingerprint Identification System (IAFIS) . The records check indicated that
9 Defendant is a citizen of Mexico with no entitlements to enter or reside in the United States. Defendant
10 was subsequently arrested and taken into custody.

11 In a subsequent interview with Marisela Hernandez, Defendant's sister, she stated taht she
12 borrowed her brother's vehicle to take her mother to Tijuana, Mexico. Her mother then bought
13 Defendant's State of California identification card and stated the idea was to bring Defendant back into
14 the United.

15 **III**

16 **MOTION FOR RECIPROCAL DISCOVERY**

17 The United States hereby moves for reciprocal discovery from Defendants. To date Defendants
18 have not provided any. The United States, pursuant to Rule 16 of the Federal Rules of Criminal
19 Procedure, requests that Defendants permit the United States to inspect, copy, and photograph any and
20 all books, papers, documents, photographs, tangible objects, or make copies of portions thereof, which
21 are within the possession, custody or control of Defendants and which Defendants intend to introduce
22 as evidence in their case-in-chief at trial.

23 The United States further requests that it be permitted to inspect and copy or photograph any
24 results or reports of physical or mental examinations and of scientific tests or experiments made in
25 connection with this case, which are in the possession or control of Defendants, which Defendants intend
26 to introduce as evidence-in-chief at the trial, or which were prepared by a witness whom Defendants
27 intend to call as a witness. Because the United States will comply with Defendants' requests for delivery
28 of reports of examinations, the United States is entitled to the items listed above under Rule 16(b)(1) of

1 the Federal Rules of Criminal Procedure. The Government also requests a written summary of the
 2 names, anticipated testimony, and bases for opinions of experts the defendant intends to call at trial
 3 under Rules 702, 703, and 705 of the Federal Rules of Evidence.

4 The United States also requests that the Court make such order as it deems necessary under Rules
 5 16(d)(1) and (2) to ensure that the United States receives the discovery to which it is entitled.

6 In addition, Rule 26.2 of the Federal Rules of Criminal Procedure requires the production of prior
 7 statements of all witnesses, except a statement made by defendants. This rule thus provides for the
 8 reciprocal production of Jencks statements. The time frame established by the rule requires the
 9 statement to be provided after the witness has testified. To expedite trial proceedings, the United States
 10 hereby requests that Defendants be ordered to supply all prior statements of defense witnesses by a
 11 reasonable date before trial to be set by the Court. Such an order should include any form in which these
 12 statements are memorialized, including but not limited to, tape recordings, handwritten or typed notes
 13 and/or reports.

14 **IV**

15 **MOTION FOR FINGERPRINT EXEMPLARS**

16 As part of its burden of proof at trial, the Government must prove beyond a reasonable doubt that
 17 Defendant is the same person who was previously deported from the United States. Defendant's
 18 warrants of deportation and related documents bear fingerprints to verify his identity. In order to meet
 19 our burden of proof, the United States anticipates calling a certified fingerprint examiner to obtain
 20 fingerprint exemplars from Defendant and compare those with the fingerprints on the immigration
 21 documents.

22 Defendant has no privilege against providing fingerprint exemplars. The Fifth Amendment
 23 privilege is limited to communications or testimonial evidence. Schmerber v. California, 384 U.S. 757,
 24 763-64 (1966). The Government's use of identifying physical characteristics, such as fingerprint
 25 exemplars, does not violate a defendant's Fifth Amendment rights. See, e.g., United States v. De Palma,
 26 414 F.2d 394, 397 (9th Cir. 1969); Woods v. United States, 397 F.2d 156 (9th Cir. 1968). Compare
 27 United States v. Jackson, 886 F.2d 838, 845 n.8 (7th Cir. 1989) ("There is no doubt that requiring a
 28 defendant to give a handwriting specimen does not violate his fifth amendment privilege against self-

1 incrimination since the privilege reaches only compulsion of a defendant's communication.").
2 Accordingly, the Court should order that Defendant provide fingerprint exemplars to the Government's
3 fingerprint expert.

4 V

5 **CONCLUSION**

6 For the foregoing reasons, the Government respectfully requests that its motions for reciprocal
7 discovery and fingerprint exemplars be granted.

8 DATED: January 7, 2008.

9 Respectfully Submitted,

10 KAREN P. HEWITT
11 United States Attorney



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13 AARON B. CLARK
14 Assistant U.S. Attorney
Email: aaron.clark@usdoj.gov

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 3:07-CR-3023-JM
Plaintiff,)
v.) CERTIFICATE OF SERVICE
JESUS JAIME HERNANDEZ- CUEVAS,)
Defendant.)

IT IS HEREBY CERTIFIED THAT:

I, Aaron B. Clark, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the United States' **Statement of Facts in Support of Motions** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Inge Brauer
2240 F. St.
San Diego, CA 92102

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 7, 2007

Aaron B. Clark